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‘Illegal labour practices, trafficking and exploitation’: An introduction to the special issue

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Abstract

This an introduction to the articles submitted to the special issue of *Trends in Organized Crime* on ‘Illegal Labour Practices, Trafficking and Exploitation’. The aim of the special issue is to draw together empirical research findings and theoretical accounts on the wider context to illegal labour and exploitation that has implications for identification, detection, prevention and regulation.

Keywords – labour exploitation, trafficking, illegal labour, labour market regulation, neoliberalism, policing

According to a UNODC report on global trafficking in persons, the share of victims trafficked for forced labour has increased in the past decade (UNODC 2016). Whilst trafficking for sexual exploitation continues to represent over 50% of all detected trafficking cases, labour exploitation figures now approach 40%. Different purposes may drive the various forms of human trafficking, but illegal labour is an increasingly commonplace phenomenon. The International Labour Organisation (2017) reported global estimates of modern slavery at around 40 million, with 25 million people in forced labour. In the UK, the National Referral Mechanism allows ‘first responder’ organisations such as local authorities, charities, and NGOs to report suspected cases of ‘modern slavery’ or ‘exploitation’. The July 2019 figures show a 40% increase in referrals compared to July 2018, with over 2,300 referrals in the three-month period from April to June 2019 (Home Office 2019). The most common type of exploitation was labour exploitation. Additionally, UNODC (2016) suggest that 42% of detected victims are trafficked domestically. This corresponds with the UK’s National Referral Mechanism data that 28% of all referrals were UK nationals, the highest figure for any nationality (Home Office 2019). Yet, while internal trafficking increasingly appears to be a significant issue, attention continues to focus on cross-border trafficking and the criminal markets and organised crime groups that perpetrate such activity. Situating illegal labour within the complex web of trafficking, smuggling and regular migration is far from simple.

According to the United Nations (2000), trafficking in persons involves ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability...for the purposes of exploitation. Exploitation shall include....prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery’. This is a broad definition, but one generally agreed upon by states and the international legal community. As Farrell et al (this issue) note, US legislation offers a similar legal definition, and all states in the USA have outlawed human trafficking and labour trafficking. While specific legislation at a local, national and international level addresses trafficking, smuggling and modern slavery, the definitions are broad and can be subject to interpretation or misidentification. There are also definitional issues around ‘illegal labour’. This could refer to illegal or informal employers (Ahmad 2008), illegal status of employees (Lewis et al 2015) or illegal employment practices within the formal or

informal economy (Scott 2017). In this issue, we specifically address labour trafficking in relation to identification, detection and prevention, as well as other forms of ‘illegal labour’.

Much of research from a criminological or criminal justice perspective approaches illegal labour from the perspective of labour trafficking and modern slavery (O’Connell Davidson 2015; De Vries 2018; Zhang 2012; Campana and Varese 2015; Matos et al 2018, Smit 2011). Identifying the signs of labour trafficking (Cockbain and Bowers 2019) and the detection and law enforcement response to trafficking (Matos et al 2018; Urban Institute 2015) is a concern that features heavily in this strand of studies. Research also comes from a wide variety of countries and regions including Eastern Europe (Petrunov 2011; Antonopoulos et al., 2019), Scandinavia (Korsell et al 2011), Africa (De Lange 2007), the Middle East (Mahdavi 2013), Ireland (Coghlan and Wylie 2011), the United States (Farrell et al 2014) and elsewhere. Quantitative evidence on the scale of trafficking and exploitation is partial and incomplete given the hidden nature of trafficking. While Tyldum (2010) recognises these limitations and advocates for research to focus on former victims of trafficking, understanding the scope and scale of this issue is challenging from a research perspective. This is also true for law enforcement since, given the ambiguities and uncertainties, detection and prevention are inevitably difficult. While national and international legislation recognises the need to protect individuals from trafficking and exploitation, this requires subsequent changes at institutional level (Matos et al 2018). Labour trafficking and exploitation does become visible through high profile cases. Victim service providers and law enforcement also become aware of a wide range of cases (Urban Institute 2015) and from this albeit partial evidence base, understanding how trafficking occurs, who perpetrates these crimes, the victims of trafficking, and developing ways to prevent or diminish, it can be identified. However, it is a complex and ever-changing picture, despite the legislative, law enforcement and regulatory efforts.

While developing the evidence base on perpetrators and criminal networks responsible for labour trafficking remains a key priority for research, illegal labour hinges on broader societal developments, and they are arguably crucial for understanding the phenomenon. This special issue aims to attract attention to these and thus open up the scope of ongoing debates within criminology. Academic research into illegal labour is becoming increasingly robust, with a range of works underscoring the significance of the above endeavour. For example, Venkatesh (2006) identifies ‘off the books’ illegal labour as part of a complex of reciprocity within deprived inner city neighbourhoods; in this latter context, the informal economy sustains locales where legitimate work is scarce. This dichotomy between formal and informal or black economy features in a range of other research that can ultimately delineate aspects of ‘illegal labour’ (Williams 2008). Recent research also investigates illegal labour within migrant communities where labour regulations prevent formal employment (Lewis et al 2015). Of course the term ‘illegal labour’ is to some extent reflecting the concerns of an established order, which, in turn, are more often than not reflected in much criminological research: labour as an activity fundamentally sustaining human life (Arendt 1958) can be judged as “illegal” only from this particular viewpoint. This immediately highlights that the roots of the issue are in fact the conditions and practices defined by those in command of the economy and the structures of the labour market and workplaces. For example, Gordon (2018) and Hatton (2018) identify numerous examples of coerced labour or ‘unfree’ work within neoliberal political economy. The point is that illegal labour exists in a wider context of labour exploitation, and therefore expanding our field of vision to the level of political economy situates labour trafficking, modern slavery and illegal practices within the normal functioning of the contemporary social order, capitalism.

Now, labour exploitation can be considered within the context of local, national and global markets, competition, and profit. The focus on organised crime groups as significant actors in the human trafficking story requires a broader perspective and macro level analysis. Vulliamy (2010) describes Mexican cartels expanding their ‘business model’ from trafficking in guns and drugs to taking over the trafficking of human cargo across the border into the United States. In identifying an opportunity for further capital accumulation, the cartels utilise existing infrastructure, networks and capital to expand. There are significant overlapping similarities in relation to the market activity of the Sinaloa Cartel and Amazon or Google. The markets and methods are different, but the capitalist imperative is the same. In the post-industrial North and West (and beyond), neoliberal political economy has been embedded and naturalised for over four decades to re-regulate the economy in order to protect markets from state interference (Slobodian 2018), to expand market opportunity and to engender a vital boost to profitability and growth (Harvey 2010). Research shows that criminal markets increasingly overlap with legitimate markets making it problematic to maintain the distinction between ‘criminal’ operators and the legitimate economy (Hall and Antonopoulos 2016).

Furthermore, labour regulation and employment protection are often impediments to growth and profitability that can and are undermined or ignored where corners can be cut (Tombs and Whyte 2015). Illegal labour takes numerous forms that a wide-angle lens can view as part of a similar process, or what critical realists would call the hidden ‘depth structures’ of society (Collier 1994). Trafficking humans for the purposes of labour is the most visible end of this spectrum but a variety of illegal labour is visible within contemporary labour markets across the globe. National employment protections are often circumvented by employers in order to maximise profitability or gain advantage; from the illegal employment of failed asylum seekers on subsistence wages (Lewis et al 2015) to the failure to pay National Minimum Wage rates to ‘fast fashion’ garment workers in the UK (Kelly 2020). Recent shifts in labour markets and employment practices such as the growth of the ‘gig economy’ (Woodcock and Graham 2019), the swing from secure to ‘flexible’ employment, the increase in zero-hour contracts, all sit within legal forms of employment practice. While not ‘illegal labour’, there are harmful consequences to such practices which raises questions for future criminological investigation of ‘illegal’ activity; the legislation of legal or illegal misses a broader point about the structures and imperatives that drive *all* practice within labour markets (Lloyd 2018; Scott 2017). This special issue aims to bring together these various themes.

In the first paper, *Ada Volodko, Ella Cockbain and Bennett Kleinberg* explore indicators of labour trafficking in Lithuanian online job advertisements. Victims of trafficking frequently originate from Eastern Europe and this paper represents an attempt to identify a source of trafficking. The authors recognise the role of online advertisements as an under-researched area of labour trafficking and exploitation and utilise quantitative methods to identify the frequency of existing trafficking indicators within adverts. Online and offline indicators are frequently used to identify trafficking, including keywords in online and social media advertising or false documentation in an offline context. Their paper demonstrates the difficulty of identifying potential sources of labour trafficking through online advertisements given the overlap between exploitative but legal forms of work and forced labour. The paper finds most adverts include at least one indicator of trafficking, which would appear to suggest that legal and illegal forms of exploitation share similar traits.

Second, *Amy Farrell, Katherine Bright, Ieke de Vries, Rebecca Pfeffer and Meredith Dank* explore data from a large qualitative study of labour trafficking in the US. In the first study to examine police responses to labour trafficking from the perspectives of the police, service

providers and victims, this paper demonstrates the difficulties associated with policing labour trafficking. Law enforcement traditionally focuses on sex trafficking rather than labour trafficking; it is easier to identify sex trafficking victims and officers often lack training or awareness of labour trafficking. The lack of clarity and definition around labour trafficking leads to problems of enforcement and prosecution; generating operational definitions for ambiguous concepts such as ‘coercion’ represent part of the problem. The institutional readiness of police to tackle labour trafficking was also identified with most front-line officers not receiving training on trafficking and overworked prosecutors likely to focus on existing, and winnable, cases in other fields. Another challenge was that trafficking offences sit outside the routine activities associated with traditional police work. Police often rely on outside agencies such as the US Department of Labor but here strong working relationships are required to enforce regulations. These limitations did not prevent a positive role for the police in this study; law enforcement could and did play a positive role in helping victims transition to safety and exit their exploitation. This paper demonstrates the complexity of policing labour exploitation and highlights areas where law enforcement works well and where provision is weaker.

Third, *Jon Davies* brings the discussion to the issue of regulation. Recognition that not all exploitation falls within the remit of the criminal law raises the question of effective regulation; top-down state regulation often fails to address the scale of labour exploitation. Davies offers a case study of the UK agri-food industry to identify forms of problematic labour exploitation and the limitations of existing governance models. He presents a tripartite model of regulation: the ‘top-down’ regulation offered by the state and criminal law; the ‘self-regulation’ associated with Corporate Social Responsibility (CSR) and other forms of ineffective self-management by firms wedded to the capitalist impulse for profit; and ‘bottom-up’ regulation called for by trade unions. Davies shows the complexity of regulating labour exploitation when each model of regulation suffers clear deficiencies. By framing exploitative labour in a wider context than simply the ‘illegal’, the author shows that governance and regulation is required on a number of levels to address the issue.

In the final paper, *Anthony Lloyd* draws on two research projects from the service economy of North East England to demonstrate how forms of legal and illegal labour exploitation permeate the low-paid sectors of contemporary labour markets. This paper also moves beyond a focus on trafficking to situate illegal labour in a broader political economic context of problematic labour practices and conditions. Working conditions within the service economy are low-paid, insecure and flexible but also rife with ‘off the books’ work, non-payment of minimum wage, denial of benefits and unpaid ‘work trials’. Utilising aspects of Marxist political economy, ultra-realist criminology and an emerging social harm framework, Lloyd, following Scott (2017) posits a continuum of legal and illegal employment practices embedded within neoliberal labour markets that stem from the same imperative for profitability and competition. This paper calls on organised crime and labour exploitation scholars to consider the wider implications and imperatives of political economy when considering forms of ‘illegal’ labour situated alongside ‘legal’ forms of harm and exploitation.

We would like to thank all contributors for their work and the timely delivery of drafts, and all reviewers for their time, valuable suggestions and critical perspectives. There is a wider context to illegal labour that has implications for identification, detection, prevention and regulation and we hope this special issue generates debate and discussion around labour exploitation, as well as avenues for future research and investigation.

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Human and animal participants: This article does not contain any studies with human participants or animals performed by any of the authors.

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